

August 10, 2018

Mr. Charles Brenton
Brenton Landscape Architecture, LLC
3120 St. Paul St. E310
Baltimore MD 21218

Re: Hunsberger Property, 2509 Cub Hill Rd. Parkville MD 21234
Forest Conservation Variance, Revised
Tracking # 03-18-2780

Dear Mr. Brenton:

A revised request for a variance from Baltimore County's Forest Conservation Law for the referenced property was received by the Department of Environmental Protection and Sustainability (EPS) on July 30, 2018. The variance request proposes to remove 22 of 43 specimen trees on the property in order to construct a 19-lot residential subdivision and the associated infrastructure. Based on a review of the site layout revisions and the location and condition of the specimen trees, EPS reviewed this application based on a total of 23 trees to be removed. This includes the following trees in fair to good condition: 9 *Liriodendron tulipifera*, 9 *Quercus rubra*, and 1 *Quercus velutina*. The 4 additional trees proposed for removal are in poor condition and include 2 *Liriodendron tulipifera*, 1 *Quercus rubra*, and 1 *Quercus velutina*. All trees, with the exception of a *Quercus velutina* in good condition, are located within moderate and high priority forest. Of the 20 specimen trees to be retained, 3 are within required forest buffer, and 15 are located within proposed forest retention areas. The property drains to two Use I tributaries that flow to Lower Gunpowder Falls.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116 of the Baltimore County Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One of the three criteria under Subsection 33-6-116 (d) must be met, and all three of the criteria under Subsection 33-6-116 (e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116 (d)(1) of the Code) requires that the petitioner show that the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of his property. The applicant proposes to create 19 residential lots. The applicant has revised the layout by shortening the access road and adjusting several lot locations to retain an additional priority forest area containing multiple specimen trees. Due to site constraints and infrastructure requirements, it appears that a major subdivision could not be constructed on the site without disturbance to moderate priority forest and removal of some specimen trees. The petitioner would not be deprived of all beneficial use of the property if the requirement from which they seek a variance were imposed as some development could occur on the site without the impacts. Therefore, this criterion has not been met.

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The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions in the neighborhood. The variance request arises due to the location of the specimen trees on the project site relative to the proposed residential development and the required infrastructure. The development proposal is based on these unique conditions of the property, and not from general conditions of the neighborhood. Therefore, this criterion has been met.

The third criterion (Subsection 33-6-116 (d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The property is surrounded by single family residential developments, a church property to the east, and a townhouse community to the west. Forest along streams exists to the east and west. The proposed retention of forest and a forest buffer on the southwestern portion of this development will connect to forest currently retained on adjacent properties. The current layout results in the retention of additional forest and 9 additional specimen trees. Based on this, this criterion has been met.

The fourth criterion (Subsection 33-6-116 (e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. Forest buffer non-disturbance areas to protect streams and wetlands are required, and retention of existing forest with reforestation adjacent to moderate priority forest is proposed on-site. Also, stormwater management is being provided for the development in accordance with current County regulations. The current layout results in the retention of additional priority forest and specimen trees on the site. Based on this, water quality will not be adversely impacted, and this criterion has been met.

The fifth criterion (Subsection 33-6-116 (e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance, which is the result of actions taken by the petitioner. This request is based on the location of specimen trees in relation to the proposed site improvements, and there has been no work conducted on the property that would have required this request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116 (e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Baltimore County Code Article 33, Title 6 Forest Conservation. The development must meet all forest conservation requirements, including planting priority areas on the property. The current layout protects additional forest and specimen trees. In addition, mitigation for specimen trees approved for removal must be met by payment of a fee-in-lieu to the Baltimore County Forest Conservation Fund. Therefore, this criterion has been met.

Based upon our review of the current layout, this Department finds that the required variance criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

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1. The 49-inch *Quercus velutina* to be removed outside forest must be mitigated by payment of a fee-in-lieu of \$942.88 to the Baltimore County EPS Forest Conservation Fund. Meeting forest conservation requirements for the area of forest cleared will provide the mitigation for the other specimen trees to be removed. A Forest Conservation Plan for this project must be approved prior to grading permit approval.
2. On all project plans, label specimen trees as “retain” or “remove” and add the following note:

A forest conservation special variance was granted by Baltimore County Department of Environmental Protection and Sustainability on August 10, 2018 to allow for the removal of 23 specimen trees on this project site. Mitigation was provided by meeting all forest conservation requirements as outlined on the forest conservation plan for the project, and by a fee-in-lieu paid to the Baltimore County EPS Forest Conservation Fund. If any specimen tree shown on the plan “to remain” is proposed to be removed, special variance approval or written authorization must first be obtained from the Department of Environmental Protection & Sustainability.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request.

Please have the contract purchaser sign the statement at the end of this letter and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Paul Dennis at (410) 887-3980.

Sincerely yours,

David V. Lykens
Deputy Director

DVL/pad

c: Marian Honeczy MDDNR

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I/we agree to the above conditions to bring my/our property into compliance with Baltimore County Forest Conservation Law.

Contract Purchaser Signature

Date

Printed Name